

Hollywood Legal Battle Erupts Over Facial Animation Technology

By Nick Wingfield

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EXHIBIT

P-267

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A technology used to animate the faces of digital superheroes in “Deadpool” and “Avengers: Age of Ultron” is at the center of a legal battle that may cause some superheadaches in Hollywood.

The spat is over who owns a novel method of electronically capturing the performances of human actors, including every smile and twitch of their facial muscles, and using the data to bring computer-generated characters to life on the screen. The technology, called Mova, won a technical Academy Award for a group of developers last year.

This month, Rearden, the technology incubator in San Francisco that developed Mova, countersued a Chinese company that has claimed ownership of the technology. Rearden, founded by the Silicon Valley serial entrepreneur Steve Perlman, is claiming a string of patent and copyright violations.

It has asked a judge to award it financial damages and block the distribution of movies and other entertainment that it claims have been made by infringing on Mova patents and trademarks. Travis W. Thomas, an intellectual-property lawyer at Baker Botts, said it was conceivable that a court could eventually block the distribution of the movies, but added that it was a “long shot” for Rearden.

Rearden’s suit follows one from the Chinese company that has claimed ownership of Mova, Shenzhenshi Haitiecheng Science and Technology Company. Shenzhenshi, which is affiliated with the well-known Hollywood visual effects company Digital Domain, sued Rearden last February as both parties began to tangle over who owned the technology.

It is now commonplace for movie and game makers to animate characters through motion capture, which typically involves placing markers all over the bodies of actors so cameras and software can record their movements. Nearly a decade ago, Mr. Perlman introduced Mova, which was designed to more faithfully capture the subtleties of facial expressions.

Mova did this by dusting the faces of actors with phosphorescent makeup and using customized hardware and software to capture the performances and convert them into data. Mova was used to help Brad Pitt’s character in “The Curious Case of Benjamin Button” appear to age in reverse, and was a part of the effects in “Gravity,” “Harry Potter and the Deathly Hallows: Part 2” and many others.



A suit claiming that Steve Perlman, above in 2011, owns the Mova animation technology seeks to block films that have used it. Peter DaSilva for The New York Times

United States District Court
Northern District of California

PLAINTIFFS' EXHIBIT
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Case No. 4:17-cv-4006-JST

Date Entered _____

By _____

Deputy Clerk

The strange story of how Mova’s ownership came to be contested resembles the twists and turns of a movie plot.

Mr. Perlman founded and controlled the online game start-up OnLive, which he merged with Mova. But as the start-up struggled, he left in 2012. According to the countersuit against Shenzhenshi that Rearden filed this month, OnLive decided to sell Mova’s assets later that year, and Mr. Perlman decided to acquire them from OnLive’s controlling investor.

He tasked a Rearden employee who worked on Mova motion capture projects, Greg LaSalle, with managing the process. But Mr. LaSalle negotiated to sell Mova’s assets improperly to Digital Domain, Mr. Perlman said in the suit, which was filed in United States District Court in San Francisco.

Shenzhenshi said in its lawsuit last year that it, in fact, acquired Mova in May 2013 and that it bought the technology legitimately from Mr. LaSalle for an undisclosed amount. The Chinese company said Mr. Perlman had previously been unable to make a successful business out of Mova and that he encouraged Mr. LaSalle to try to salvage it on his own.

Mr. Perlman's later desire to regain control of Mova stemmed from "a severe bout of 'seller's remorse' " after widespread publicity about the Academy Award related to the technology, Shenzhenshi said in its suit. Shenzhenshi is "closely related" to Digital Domain and its Hong Kong-based parent company, Digital Domain Holdings, Rearden said in its countersuit.

Lawyers for Shenzhenshi did not respond to repeated requests for comment.

Mr. LaSalle now works for Digital Domain, where he is listed as director of visual development. A spokesman for Digital Domain did not respond to requests for comment, and Mr. LaSalle could not be reached. In recent interviews about "Deadpool," one of the year's biggest hits, Mr. LaSalle has said he personally performed the facial expressions that animated the metallic superhero Colossus in the movie.

Mr. Perlman — who sold the set-top box start-up WebTV to Microsoft in the 1990s for more than \$500 million and now runs a wireless start-up — declined to comment about the litigation. A news release that Rearden planned to release on Wednesday about its countersuit identified movies with billions of dollars in collective box-office receipts that it said did not have a legitimate license to use Mova's technology, including "Deadpool," "Terminator Genisys" and "Guardians of the Galaxy."

Alex V. Chachkes, an intellectual-property lawyer at Orrick, Herrington & Sutcliffe, said he saw little chance that Rearden could prevent big movies that were created using Mova from being distributed, in part because courts tend to shy away from blocking the release of movies out of concerns about the First Amendment. It is more likely that Rearden could disrupt movie projects that Digital Domain is working on if a court ultimately sides with it, he said.

"There's roughly zero chance they could do anything to slow down the 'Deadpool' juggernaut," Mr. Chachkes said.